

**FLASTER/GREENBERG P.C.**

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**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

NIAGARA MOHAWK POWER CORPORATION,

*Plaintiff,*

v.

WINDSTREAM COMMUNICATIONS, LLC f/k/a  
WINDSTREAM COMMUNICATIONS, INC,

*Defendant.*

Case No: 5:16-CV-35[DNH/TWD]

REMOVED FROM:  
STATE OF NEW YORK  
SUPREME COURT  
ONONDAGA COUNTY

Index No.: 2015EF4568

**NOTICE OF REMOVAL**

TO: The Judges of the United States District  
Court for the Northern District of New York

PLEASE TAKE NOTICE that defendant Windstream Communications, LLC f/k/a Windstream Communications, Inc. (“Windstream”) hereby removes the above-entitled action from the State of New York, Supreme Court, Onondaga County to the United States District Court for the Northern District of New York pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

In support of this Notice of Removal, Windstream states:

1. On November 6, 2015, plaintiff Niagara Mohawk Power Corporation (“Niagara”) filed a Complaint in the State of New York Supreme Court, Onondaga County. The dispute involves an alleged breach of contract. A copy of the Complaint and exhibits are attached as Exhibit A.

2. Pursuant to Niagara's Complaint, Niagara is a corporation organized and existing under the laws of the State of New York, with a principal place of business located at 300 Erie Boulevard West, Syracuse, New York 13202. See Exh. A, ¶ 2. Accordingly, Niagara is a citizen of the State of New York.

3. Windstream Communications, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. Windstream Communications, LLC is the successor to Windstream Communications, Inc. See Exh. A, ¶ 3. Windstream Communications, LLC's sole member is Windstream Services, LLC. Windstream Services, LLC is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business located at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. Windstream Services, LLC's sole member is Windstream Holdings, Inc., a corporation organized under the laws of the state of Delaware, with its principal place of business located at 4001 Rodney Parham Road, Little Rock, Arkansas 72212. See Certification of Vicki Olsen, ¶ 2, attached as Exhibit B.

4. Windstream is a citizen of the States of Delaware and Arkansas for purposes of 28 U.S.C. § 1332.

5. On December 28, 2015, Niagara filed an Affidavit of Service on a Corporation through the New York Department of State, Secretary of State [NYSCEF Doc. No. 12]. A copy of the Affidavit of Service is attached as Exhibit C. The Affidavit of Service states that the Summons and Complaint, with Exhibits, were served on Windstream by deliverance to the Office of the Secretary of State of the State of New York. To date, the Summons and Complaint have not been personally delivered to Windstream. Windstream only learned of the filing of the

Affidavit of Service by checking the State Court docket. Windstream's registered agent, CT Corporation, does not have any record of receiving the Summons and Complaint. See Olsen Cert., ¶ 3. Windstream preserves all of its defenses, including any defenses based on improper service.

6. Niagara alleges damages in the amount of \$9,411,159.42.

7. The United States District Court for the Northern District of New York has original jurisdiction over this action pursuant to 28 U.S.C. § 1332 because it arises between citizens of different states and the amount in controversy is in excess of \$75,000, exclusive of interest and costs.

8. As of this date, Windstream has not filed a responsive pleading in the action commenced by Niagara in the State of New York, Supreme Court, Onondaga County, and no other proceedings have transpired in that action.

WHEREFORE, defendant, Windstream Communications, LLC f/k/a Windstream Communications, Inc., requests that the above-captioned matter, now pending against it in the State of New York, Supreme Court, Onondaga County, be removed to the United States District Court for the Northern District of New York.

**FLASTER/GREENBERG P.C.**  
**Attorneys for Defendant**

Date: January 11, 2016

By: /s/ Darren H. Goldstein  
Darren H. Goldstein  
*Attorneys for Defendant Windstream  
Communications, LLC f/k/a Windstream  
Communications, Inc.*

**CERTIFICATE OF SERVICE**

I, Darren H. Goldstein, hereby certify that on the 11th day of January 2016, I caused a true and correct copy of Defendant's Notice of Removal and exhibits to be served as follows:

**VIA E-MAIL & REGULAR MAIL**

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John M. Nichols, Esquire  
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*Attorney for Plaintiff Niagara Mohawk Power Corporation*

**VIA ELECTRONIC FILING**

State of New York Supreme Court  
County of Onondaga  
Onondaga County Clerk's Office  
401 Montgomery Street  
Syracuse, NY 13202  
Phone: (315)435-2227

/s/ Darren H. Goldstein  
Darren H. Goldstein, Esquire

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